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BULLETIN TITLE: Establishment of Aviation Safety Action Programs (ASAP)

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APPLICABILITY: This bulletin applies to Principal Operations Inspectors and Principal Maintenance Inspectors who have oversight responsibility for part 121 or 145 certificate holders.

THIS BULLETIN REQUIRES PTRS INPUT. SEE ITEM #7.

1. PURPOSE. This bulletin provides guidance for the establishment of Aviation Safety Action Programs (ASAP). The objective of ASAP is to prevent accidents and incidents by encouraging employees of certain certificate holders to voluntarily report safety issues and events. The program further provides for education of appropriate parties and the analysis and correction of safety concerns that are identified in the program. Aviation Safety Action Programs are intended to create a non-threatening environment to encourage the employee to voluntarily report safety issues even though they may involve a violation of Title 49 of the United States Code (49 U.S.C.) Subtitle VII or a violation or violations of Title 14 of the Code of Federal Regulations (14 CFR). ASAP is based on a safety partnership between the Federal Aviation Administration (FAA) and the certificate holder and may include any third party such as the employee's labor organization.

A. These programs are intended to generate safety information that may not otherwise be obtainable. The information and data, which are collected and analyzed, can be used to measure the effect of ASAP on aviation safety.

B. These programs provide a vehicle whereby employees of certain air carriers and certain repair station certificate holders can identify and report safety issues to management and

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FAA for resolution generally without fear FAA will use those reports to take enforcement action against them.¹ These programs are designed to encourage participation from employee groups, such as flight crewmembers, mechanics, flight attendants, and dispatchers.

C. The elements of ASAP are set forth in a Memorandum of Understanding (MOU) between FAA, certificate holder management, and any third party, such as an employee's labor organization or their representatives.

2. CANCELTION. This bulletin cancels and replaces HBAW 97-02 and HBAW 97-03, Establishment of Aviation Safety Action Programs (ASAP).

3. BACKGROUND. In recent years FAA and the air transportation industry have identified safety areas that were in need of improvement. In response to these safety needs, FAA, in cooperation with industry, established several demonstration Partnership for Safety Programs in an effort to increase the flow of safety information to both the air carrier and FAA. Among these programs were the US Air Altitude Awareness Program, the American Airlines Safety Action Program, and the Alaska Airlines Altitude Awareness Program. The success of these programs prompted FAA to expand the use of partnership programs. ASAP includes incentives that encourage participating employees to disclose safety information which may include possible violations of 14 CFR without fear of punitive legal enforcement sanctions.

4. KEY TERMS. The following key terms and phrases are defined for the purposes of ASAP to ensure a standard interpretation of the guidance.

A. Administrative Action. Under paragraph 205 of FAA Order 2150.3A, Compliance Enforcement Program, administrative action is a means for disposing of violations or alleged violations that do not warrant the use of legal enforcement sanctions. The two types of administrative action are a warning notice and a letter of correction.

B. Air Carrier. A person who undertakes directly, by lease, or other arrangement, to engage in air transportation.

C. Certificate Holder. A person authorized to operate under 14 CFR part 121, or who holds a certificate issued under 14 CFR part 145.

¹ The FAA reserves its discretion to use ASAP reports for legal enforcement purposes where such reports disclose events that appear to involve **possible** criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

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D. Certificate Holding District Office (CHDO). The Flight Standards District Office (FSDO) having overall responsibility for all FAA reporting requirements, technical administration requirements, and regulatory oversight of a certificate holder.

E. Consensus of the Event Review Committee (ERC). Under ASAP, consensus of the ERC means the voluntary agreement of all representatives of the ERC.

(1) The ERC representatives will strive to reach consensus on whether a reported event that involves noncompliance with the Regulations, a qualification issue, or medical certification or qualification issue is covered under the program; how that event should be addressed, and the corrective action or any enforcement action that should be taken as a result of the report. For example, the ERC should strive to reach a consensus on the recommended corrective action to address a safety problem such as an operating deficiency or airworthiness discrepancy reported under ASAP. The corrective action process would include working to resolve the safety issue(s) with the appropriate departments at the certificate holder and FAA that have the expertise and responsibility for the safety area of concern.

(2) Recognizing that FAA holds statutory authority to enforce the necessary rules and regulations, it is understood that FAA retains all legal rights and responsibilities contained in Title 49, United States Code, and Order 2150.3A. In the event there is not a consensus of the ERC on decisions concerning a report involving apparent violations, a qualification issue, or medical certification or qualification issue, the FAA ERC representative will decide how the report should be handled, including whether it should be covered under the ASAP, and the appropriate action, including corrective action and enforcement action, if any, to be taken. FAA will not use the content of the ASAP report in any subsequent enforcement action except for events that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

F. Covered Under the Program/Qualified for Inclusion/or Included in ASAP. For the purposes of ASAP, these terms all have the same meaning. They mean that the enforcement-related incentives and other provisions of the ASAP apply to the employee who submitted the report.

G. Corrective Action. For the purposes of ASAP, corrective action is any safety-related action determined necessary by the ERC based upon a review and analysis of the reports submitted

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under an ASAP. Corrective action may involve joint or individual action by the parties to the ASAP MOU.

H. Enforcement-Related Incentive. An assurance that lesser enforcement action will be used to address certain alleged violations of the Regulations to encourage participation by certificate holder employees.

I. Event Review Committee (ERC). A group comprised of a representative from each party to an ASAP. The group reviews and analyzes reports submitted under an ASAP. The ERC may share and exchange information and identify actual or potential safety problems from the information contained in the reports. The ERC usually is comprised of a management representative from the certificate holder, a representative from the employee group, and a specially qualified FAA inspector from the CHDO. Previous demonstration ASAP used the ERC concept. However, the parties may agree to use an alternative process.

J. Intentional Falsification. For the purposes of ASAP, intentional falsification means a false statement in reference to a material fact made with knowledge of its falsity. It does not include mistakes, inadvertent omissions, or errors.

K. Major Domestic Repair Station. Refers to a part 145 certificated repair station located in the United States certificated to perform airframe and/or engine maintenance for certificate holders operating under part 121.

L. Memorandum of Understanding (MOU). The written agreement between two or more parties setting forth the purposes for, and terms of, an ASAP.

M. Party/Parties. The certificate holder, FAA, and any other person or entity (e.g., labor union or other industry or Government entity) that is a signatory to the MOU.

N. Person. An individual, firm, partnership, corporation, company, association, joint stock association, or government entity. It includes a trustee, receiver, assignee, or similar representative of any of them.

O. Safety-Related Report. A written account of an event that involves an operational or maintenance issue related to aviation safety reported through an ASAP.

P. Sole-source Report. For the purpose of ASAP, FAA considers a report to be sole-source when all evidence of the event is discovered by or otherwise predicated on the report. It is possible to have more than one sole-source report for the same event. In

other words, a report is considered a sole-source report when there is no evidence of the event other than the report and information discovered as a result of the report. It is possible to have more than one sole-source report for the same ASAP event.

Q. Sufficient Evidence. Evidence gathered by an investigation not caused by, or otherwise predicated on, the individual's safety-related report. For apparent violations covered under an ASAP, no more than administrative action will be taken against an individual for an apparent violation reported under the program. There must be sufficient evidence to prove the violation, other than the individual's safety-related report.

R. Voluntary Disclosure Policy. A policy under which regulated entities may voluntarily report apparent violations of the regulations and develop corrective action satisfactory to FAA to preclude their recurrence. Certificate holders that satisfy the elements of the voluntary disclosure policy, receive a letter of correction in lieu of civil penalty action. Voluntary disclosure reporting procedures are outlined in Advisory Circular (AC) 00-58, Voluntary Disclosure Reporting Program.

5. DISCUSSION.

A. GENERAL.

(1) ASAP are intended for air carriers that operate under part 121 and major domestic repair stations.

(2) ASAP are entered into voluntarily by FAA, a certificate holder, and, if appropriate, other parties such as the reporting employee's labor organization. Examples of employee groups who may participate in an ASAP are flight crewmembers, flight attendants, mechanics, and dispatchers.

(3) Programs are developed by the certificate holder and submitted to FAA for review and acceptance. Ordinarily, programs are developed for specific employee groups, such as flight crewmembers, flight attendants, mechanics, or dispatchers. However, the certificate holder may submit more than one employee group ASAP program at the same time.

(a) Demonstration Programs. A demonstration program is used to measure the effectiveness of the specific ASAP and to ensure that the safety objectives of that ASAP are met. The initial demonstration program, which shall be limited to the period of time needed to achieve the desired goals and benefits articulated in the program, should have a duration of no longer than 18 months and should be reviewed by all parties prior to renewal. At the end of this time period, the program should be

reviewed by all parties. If any parties to the MOU identify deficiencies in the demonstration program, the program may be modified to address these deficiencies. The program may then be renewed for up to 12 months in order to measure the effects of the modifications. Modifications to Demonstration ASAP MOU's must be accepted by all parties prior to implementation.

(b) Continuing Programs. After a demonstration program is reviewed and determined to be successful by the parties to the agreement, it may continue in effect, subject to review and renewal every 2 years by the CHDO. Modifications to continuing ASAP MOU's must be accepted by all parties prior to implementation.

NOTE: Regardless of the duration of a program, any party to the ASAP MOU may withdraw from and terminate the program at any time.

(4) FAA may suggest, but not require, that a certificate holder develop an ASAP to resolve an identified safety issue.

(5) An ASAP can result in a significant commitment of resources by the parties to the program.

(6) All safety-related reports shall be fully investigated.

(7) The determination of whether a program is acceptable for FAA participation will be made by FAA.

(8) Voluntary Disclosure Reporting Procedures would be available to an air carrier or major domestic repair station for events that involve an apparent violation on its part. (See Advisory Circular AC 00-58, Voluntary Disclosure Reporting Program, and Order 2150.3A, Appendix 1: Compliance/Enforcement Bulletin Number 90-6).

(9) ASAP may be a part of the certificate holder's comprehensive safety program. However, it must be operated in accordance with the provisions of AC 120-66, Aviation Safety Action Programs (ASAP), as amended, and this bulletin.

B. ASAP CONCEPTS. The specific provisions of an ASAP are described by a Memorandum of Understanding (MOU) which is primarily developed by the certificate holder, FAA CHDO, and in some cases a third party such as an employee labor union. The guidance material contained in this bulletin and AC 120-66, as amended, provide structure and guidance in preparing a program acceptable for FAA participation. Each ASAP should be tailored to fit a certificate holder's particular needs and capabilities. However, several workable concepts have emerged from the ASAP

demonstration programs. These concepts should be considered when creating an ASAP and, if used, addressed in the MOU. These concepts are explained below:

(1) Event Review Committee. The ERC will determine whether reports will be qualified for inclusion in the ASAP. The ERC is composed of one designated representative and an alternate, each from FAA, the certificate holder, and any third party, such as the employee's union or representative organization or a government entity. The ERC will review and analyze reports submitted under the ASAP, determine whether such reports qualify for inclusion under the ASAP, identify actual or potential problems from the information contained in the reports, and propose solutions for those problems. For official meeting purposes, a quorum exists when all designated ERC representatives, or their alternates, are present. Some reported events may involve matters that are complex or sensitive, or that require the expertise of other FAA or industry persons. The ERC representatives are encouraged to consult with such persons as needed during the ASAP process.

(2) Consensus of ERC. The success of ASAP is built on the ability of the ERC to achieve consensus on each event that is reported. Under ASAP, the term "consensus" is defined as the voluntary agreement of all ERC representatives. The ERC must reach a consensus when deciding whether a report is accepted into the program and when deciding on corrective action recommendations arising from the event, including any FAA enforcement action. It does not require that all members believe that a particular decision or recommendation is the most desirable solution, but that the result falls within each member's range of acceptable solutions for that event in the best interest of safety.

(a) When the ERC becomes aware of an issue involving the medical qualification or medical certification of an airman, the ERC must immediately advise the appropriate Regional Flight Surgeon about the issue. The ERC will work with the Regional Flight Surgeon and the certificate holder's medical department or medical consultants to resolve any medical certification or medical qualification issues or concerns revealed in an ASAP report, or through the processing of that report. The FAA ERC member must follow the direction(s) of the Regional Flight Surgeon regarding any medical certification or medical qualification issue(s) revealed in an ASAP report.

(b) Recognizing that FAA holds statutory authority to enforce the necessary rules and regulations, it is understood that FAA retains all legal rights and responsibilities contained in Title 49, United States Code, and Order 2150.3A. In the event there is not a consensus of the ERC on decisions concerning a

report involving apparent violations, a qualification issue, or medical certification or medical qualification issue, the FAA ERC representative will decide how the report should be handled and the appropriate action, including corrective action and enforcement action, if any is to be taken. FAA will not use the content of the ASAP report in any subsequent enforcement action except for events that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol or intentional falsification.

(c) If a consensus is not reached by the ERC and any party takes independent action, then that action could be considered grounds for any party to withdraw from the program. The program may be terminated at any time by any party.

(3) Sole Source Reporting.

(a) As the demonstration programs indicated, often the only information available concerning a safety event is the individual's ASAP report. Under ASAP this is referred to as a "sole-source" report. Therefore, an ASAP report is considered sole-source when all evidence of the event is discovered by or otherwise predicated on the report. ASAP is based on the principles of identification and corrective action. The ERC will close the report and provide feedback to the reporting employee in a form and manner acceptable to the ERC, if:

i. the event involves a possible violation of an FAA regulation;

ii. the report is sole-source;

iii. the individual involved meets the criteria for participation; and

iv. the individual involved complies with the corrective actions recommended by the ERC.

(b) It is possible to have more than one sole-source report for the same event.

(c) After the investigation is complete and the only source of evidence obtained is from the reporting individual, or is caused by or predicated upon the report, **NO** FAA enforcement action or correspondence outside of the ERC is required for reports accepted under ASAP.

(d) Sole source reports should **NOT** be closed with a FAA Letter of No Action, a Letter of Correction or a Warning Notice for reports accepted under ASAP.

(4) Sufficient Evidence. Sufficient Evidence means evidence gathered by an investigation not caused by, or otherwise predicated on, the individual's safety-related report. Reports accepted into the program, which are supported by sufficient evidence, are referred to as non-sole source reports.

(a) The inspector should only open an Enforcement Investigative Report (EIR) at such time during the investigation that it is determined that sufficient evidence of an apparent violation exists, as defined in AC 120-66A, as amended

i. For reports that are accepted under an ASAP, neither administrative action nor punitive legal enforcement action will be taken against an individual for an apparent violation unless there is sufficient evidence of the violation, other than the individual's safety-related report.

ii. For reports that are accepted under ASAP, a FAA Warning Letter or Letter of Correction, in addition to an appropriate ERC reply to the reporter, would be used to close an ERC investigation when the evidence provided for the non-sole source report is sufficient to prove a violation.

iii. For reports that are accepted under ASAP, a FAA Letter of No Action, in addition to an appropriate ERC reply to the reporter, would be used to close an ERC investigation when the evidence provided for a non-sole source report fails to prove a violation.

(b) Under ASAP, except for reports that appear to involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification, the content of any individual's ASAP report will not be used as evidence by FAA for any purpose in an FAA enforcement action.

(5) Enforcement-Related Incentive. An enforcement-related incentive is the minimum FAA enforcement action that is needed to achieve the desired goal(s) and results of the program when alleged infractions of 14 CFR are involved.

(a) Apparent violations of the regulations by certificate holder employees disclosed through safety-related reports will ordinarily be addressed with administrative action if:

i. sufficient evidence exists; and

ii. the apparent violation(s) are inadvertent and do not involve an intentional disregard for safety.

(b) Violations that are not inadvertent or that involve an intentional disregard for safety are specifically excluded from the program and any enforcement-related incentive will not apply to these violations.

(c) Reports that appear to involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification are automatically excluded from the program and are turned over to the proper authorities for further investigation.

(d) Conduct that raises a question of a lack of airman qualification and medical certification or qualification matters may be addressed by ASAP; however, the employee must successfully complete all of the recommendations made by the ERC to be covered by the program.

(e) Reports initially accepted under an ASAP will be excluded from the program if the employee fails to complete the recommended corrective action in a manner satisfactory to all members of the ERC. Failure of a certificate holder to follow through with corrective action acceptable to FAA to resolve any safety deficiencies will ordinarily result in termination of the program. In addition, failure of any individual to complete corrective action for an apparent violation, a qualification issue, or medical certification issue in a manner acceptable to all members of the ERC, may result in the reopening of the case and referral of the matter for appropriate action.

C. Guidelines for acceptance and exclusion of reports under ASAP.

(1) Guidelines for acceptance of reports under ASAP.

(a) General. Participation in ASAP is limited to certificate holder employees and to events occurring while acting in that capacity. Each employee participating in ASAP must individually submit a report in order to receive the enforcement-related incentives and benefits of the ASAP. However, in cases where an event may be reported by more than one person, each individual who seeks coverage under ASAP may sign the same report.

(b) Criteria for Acceptance. The following criteria must be met in order for a report involving a possible violation to be covered under ASAP:

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i. The employee must submit a report in a timely manner, usually within 24 hours after the occurrence of the event or as defined in the MOU. If submitted within 24 hours of the time of the event or the time period stated in the MOU, a report would be included if the ERC reaches consensus that all ASAP acceptance criteria have been met, even if FAA was already aware of the possible violation and may have brought it to the attention of the employee.

ii. The alleged regulatory violation must be inadvertent, and must not appear to involve an intentional disregard for safety. As stated in Order 2150.3A, inadvertent apparent violations are generally the result of simple failure to exercise reasonable care.

iii. The reported event must not appear to involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

(c) Conditional Acceptance. If a report is submitted by an employee covered under the MOU later than 24 hours or the time period stated in the MOU after the occurrence of an event, the ERC will review all available information to determine whether the employee knew or reasonably should have known about the possible violation within 24 hours or the time period stated in the MOU of its occurrence. If the employee did not know or could not have known about the apparent violation(s), then the report would be included in ASAP, provided all other ASAP acceptance criteria have been met. If the employee knew or should have known about the apparent violation(s) during the applicable period, then the report will not be included in ASAP except as follows: For sole source reports that are solicited by the ERC because an event raises significant safety issues and it is essential to obtain this additional information to gain an understanding of the event, the ERC may waive the conditional acceptance criteria of this paragraph. Sole source reports obtained on this basis will be accepted under ASAP, provided that all other ASAP acceptance criteria are met.

i. Non-reporting employees covered under an ASAP MOU. If an ASAP report identifies another covered employee of the certificate holder in a possible violation, and that employee has neither signed that report nor submitted a separate report, the ERC will determine on a case-by-case basis whether that employee knew or reasonably should have known about the possible violation. If the ERC determines that the employee did not know or could not have known about the apparent violation(s), and the original report otherwise qualifies for inclusion under ASAP, the ERC will offer the non-reporting employee the opportunity to submit their own ASAP report. If the non-reporting employee

submits their own report within 24 hours of notification from the ERC, or as described in the MOU, that report will be afforded the same consideration under ASAP as that accorded the report from the original reporting employee, provided all other ASAP acceptance criteria are met. However, if the non-reporting employee fails to submit their own report within 24 hours of notification, or as described in the MOU, the possible violation by that employee will be referred to an appropriate office within the FAA for additional investigation and reexamination and/or enforcement action, as appropriate, and for referral to law enforcement authorities, if warranted.

ii. Non-reporting employees not covered under the MOU. If an ASAP report identifies another employee of the certificate holder who is not covered under the MOU, and the report indicates that employee may have been involved in a possible violation, the ERC will determine on a case-by-case basis whether it would be appropriate to offer that employee the opportunity to submit an ASAP report. If the ERC determines that it is appropriate, the ERC will provide that employee with information about ASAP and invite the employee to submit an ASAP report. If the employee submits an ASAP report within 24 hours of notification, or as described in the MOU, that report will be covered under ASAP. If the employee fails to submit an ASAP report within 24 hours of notification, or as described in the MOU, the possible violation by that employee will be referred to an appropriate office within the FAA for additional investigation and reexamination and/or enforcement action, as appropriate, and for referral to law enforcement agencies, if warranted.

(d) Repeated Violations. Reports involving the same or similar alleged violations previously covered under ASAP that satisfy the basic acceptance criteria may also be covered under ASAP. The ERC will determine on a case-by-case basis whether such a report will be covered under ASAP, based upon the facts and circumstances surrounding the alleged violation. The MOU must state that the ERC will be provided with a means of determining whether a report involves a repeat of the same or a similar alleged violation by the same employee previously covered under ASAP. However, the specifics of how this is accomplished do not need to be addressed in the MOU.

(2) Guidelines for excluding reports from ASAP. The following types of reports are excluded under an ASAP:

(a) Reports involving an apparent violation that is not inadvertent or that appears to involve an intentional disregard for safety.

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i. For example, a pilot misreading an item on a checklist usually would be considered inadvertent. Failure to use the checklist, however, would not be considered inadvertent.

ii. Another example: if the action of a mechanic is not an intentional or grossly negligent disregard for safety, his/her report will ordinarily be accepted into the program, providing all other ASAP acceptance criteria have been met.

(b) Reports that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification;

(c) Reports for which there is a lack of consensus among the ERC members that the report should be covered under the ASAP;

(d) Reports initially covered under an ASAP will be excluded from the program if the employee fails to complete the recommended corrective action in a manner satisfactory to all members of the ERC. In those cases, failure of any individual to complete corrective action for an apparent violation, a qualification issue, or medical certification or medical qualification issue in a manner acceptable to all members of the ERC, may result in the reopening of the case and referral of the matter for appropriate action.

D. Enforcement Policy.

(1) Use of the ASAP Report.

(a) The content of the ASAP report will not be used to initiate or support any company disciplinary action, or as evidence for any purpose in an FAA enforcement action, except as provided in paragraph 5.D.(3)(d).

(b) FAA may use the information from such a report to conduct an independent investigation of the event and any alleged violations disclosed in the report. Any safety-related event that concerns an apparent violation(s) and is excluded from ASAP, will be referred to an appropriate office within FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

(2) Enforcement-related incentive for reports covered under an ASAP.

(a) General. ASAP may include an enforcement-related incentive(s) to encourage participation by certificate holder employees. Any enforcement-related incentive should be limited to what is needed to achieve the desired goal and results of the

program. The enforcement-related incentive described in paragraph 5.B.(5) is the maximum enforcement-related incentive permitted under the ASAP program. The parties may elect a lesser enforcement protection if they decide that this would be appropriate for their program. For example, the parties may determine that airman qualification matters should be excluded from their ASAP. In this case, the enforcement-related incentives would not extend to cases that involve the qualification of airmen.

(b) For reports covered under an ASAP where the criteria in paragraph 5.C.(1) are met and applicable law does not require that legal enforcement action be taken, the following enforcement-related incentives are permitted.

i. Alleged violations by certificate holder employees disclosed through safety-related reports that are not sole-source reports and where sufficient evidence exists will ordinarily be addressed with administrative action, notwithstanding the criteria in paragraph 205 of Order 2150.3A;

ii. Alleged violations by certificate holder employees disclosed through safety-related reports that are sole-source reports will ordinarily not require any FAA action or correspondence. For sole source reports that are accepted under ASAP the ERC shall be responsible for providing feedback to the reporting individual.

(c) Reports Involving Qualifications Issues. Reports that demonstrate a lack, or raise a question of a lack, of qualification of a certificate holder employee will be addressed with corrective action if appropriate and recommended by the ERC. If an employee fails to complete the corrective action in a manner satisfactory to all members of the ERC, then his/her report will be excluded from ASAP. In these cases, the ASAP event will be referred by the FAA ERC representative to an appropriate office within FAA for any additional investigation, reexamination, and/or legal enforcement action, as appropriate.

(3) Enforcement policy for reports excluded under ASAP.

(a) Excluded reports involving intentional disregard for safety. The following policies apply to alleged violations involving an intentional disregard for safety that are disclosed in ASAP reports:

(b) Alleged violations involving an apparent intentional disregard for safety that do not demonstrate a lack, or raise a question of a lack, of qualification or medical certification or medical qualification, will be

addressed with no more than administrative action, provided the ASAP reports are sole-source reports and provided the employee completes corrective action considered appropriate by the FAA. If the employee fails to complete this corrective action, then the report will be referred to an appropriate office within the FAA for any additional investigation and/or enforcement action, as appropriate.

(c) Alleged violations involving an apparent intentional disregard for safety that also demonstrate or raise a question of a lack of qualification will be referred to an appropriate office within FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

(d) Untimely Reports. The following policies apply to reports that are excluded only because they are untimely (i.e. they are submitted later than 24 hours or the time period stated in the MOU):

(i) Reports that are excluded only because they are untimely that do not demonstrate a lack, or raise a question of a lack, of qualification or medical certification or medical qualification, will be addressed with no more than administrative action, provided the ASAP reports are sole-source reports and provided the employee completes corrective action considered appropriate by the FAA. If the employee fails to complete this corrective action, then the report will be referred to an appropriate office within the FAA for any additional investigation and/or enforcement action, as appropriate.

(ii) Reports that are excluded only because they are untimely that also demonstrate a lack, or raise a question of a lack, of qualification or medical certification or medical qualification, will be referred to an appropriate office within the FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

(e) Reports that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification will be referred to an appropriate FAA office for further handling. FAA may use such reports for any enforcement purposes, and will refer such reports to law enforcement agencies, if appropriate.

(f) Failure to Complete Corrective Action. Reports initially covered under an ASAP will be excluded from the program if the employee fails to complete the recommended corrective action in a manner satisfactory to all members of the ERC. In

those cases, failure of any individual to complete corrective action for an apparent violation, a qualification issue, or medical certification or qualification issue in a manner acceptable to all members of the ERC, may result in the reopening of the case and referral of the matter for appropriate action.

(g) Any safety-related event that concerns an apparent violation(s) that is excluded from ASAP, will be referred to an appropriate office within FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

(4) Reopening reports based on new evidence.

(a) All safety-related reports should be fully evaluated and, to the extent appropriate, investigated by the ERC.

(b) A closed ASAP case including any related EIR involving a violation addressed with the enforcement-related incentive, or for which no action has been taken, may be reopened and appropriate enforcement action taken if sufficient evidence is later discovered that establishes that the violation should have been excluded from the program.

(5) Violations of certificate holders. Apparent violations of certificate holders disclosed through a safety-related report under an ASAP may be handled under the voluntary disclosure policy, provided the certificate holder voluntarily reports the apparent violations to FAA and the other elements of that policy are met. (See AC 00-58 and Order 2150.3A, Appendix 1: Compliance/Enforcement Bulletin No. 90-6).

E. Memorandum of Understanding.

(1) The provisions of an ASAP that is acceptable to FAA should be set forth in an MOU signed by each party. The implementation of the ASAP will be in accordance with the provisions of the MOU. A sample MOU is provided in Appendix 1 of AC 120-66, as amended.

(2) For the purpose of this bulletin the term "party/parties" refers to the certificate holder, FAA, and any other person or entity that is a signatory to the MOU and would be a major contributor to the success of the respective ASAP. This could include labor unions or other industry or government entities. It should be noted that FAA only regulates certificate holders and other persons subject to 14 CFR. However, all signatories are expected to conform to the provisions of the MOU.

(3) The MOU should be written with the theme of open communication and trust between the parties to the agreement.

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(4) Each MOU will be based on the parties' different needs and purposes for an ASAP. The MOU shall set forth the elements of the ASAP, including at least the following:

(a) The identification of what type of operator the program applies to: part 121 Air Carrier or a Major Domestic Repair Station.

(b) The identification of the type of program and the employee group(s) to whom it pertains. The type of programs are Demonstration Program, Renewal of Demonstration Program, Continuing Program or Renewal of a Continuing Program.

(c) The duration of the program, which should be limited to the period of time needed to achieve the desired goals and benefits articulated in the program. Demonstration programs initially should have a duration of no longer than eighteen (18) months and should be reviewed prior to renewal. Demonstration programs that undergo changes after their initial review may be renewed for no longer than 12 months. Programs that are classified as Continuing must be reviewed and renewed every 2 years.

(d) A statement to the effect that all parties to the ASAP have entered into this agreement voluntarily.

(e) A description of the objective(s) to include the essential safety information that is reasonably expected to be obtained through the program, any specific safety issues that are of a concern to any of the parties, and the benefits to be gained through the use of the program.

(f) A description of any enforcement-related incentive that is needed to achieve the desired goal and results of the program.

(g) A statement that all safety-related reports shall be fully evaluated and, to the extent appropriate, investigated by the ERC.

(h) A description of the manner in which ASAP records and reports shall be kept. ASAP records and reports shall be kept in a manner acceptable to the ERC and described in the MOU. The MOU should state that the certificate holder's ASAP records and reporting system shall not be contrary to the Federal Aviation Regulations and the Pilot Records Improvement Act (PRIA), or other laws.

i. A description of the process for the timely reporting to the ERC of all events disclosed under the program. The employee must submit a report in a timely manner, usually

within 24 hours after the occurrence of the event or as defined in the MOU. If submitted within 24 hours from the time of the event or the time period stated in the MOU, a report would be included if the ERC reaches consensus that all ASAP acceptance criteria have been met, even if FAA was already aware of the possible violation and may have brought it to the attention of the employee. If a report is submitted later than 24 hours or the time period stated in the MOU after the occurrence of an event, the ERC will review all available information to determine whether the employee knew or reasonably should have known about the possible violation within 24 hours or the time period stated in the MOU of its occurrence. If the employee did not know or could not have known about the apparent violation(s), then the report would be included in ASAP, provided all other ASAP acceptance criteria have been met. If the employee knew or should have known about the apparent violation(s), then the report will not be included in ASAP, except as follows: For sole source reports that are solicited by the ERC because an event raises significant safety issues and it is essential to obtain this additional information to gain an understanding of the event, the ERC may waive the conditional acceptance criteria of the MOU. Sole source reports obtained on this basis will be accepted under ASAP, provided that all other ASAP acceptance criteria are met.

(j) A description of the procedures for the resolution of those events that are safety-related; and of the procedures for continuous tracking and analysis of safety-related events.

(k) A description of the ERC ASAP Report Acceptance and Exclusion criteria.

(l) A description of the frequency of periodic reviews by the parties to determine whether the program is achieving the desired results. These reviews are in addition to any other review conducted by FAA or any other party individually.

(m) Identify the point(s) of contact within each party who are responsible for oversight of the program.

(n) A description of the process for training and distributing information about the program to certificate holder employees and procedures for providing feedback to individuals who make safety related reports under the program.

(o) A statement that modifications to the MOU must be accepted by all parties.

(p) A statement that termination or modification of a program will not adversely affect anyone who acted in reliance on

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the terms of a program in effect at the time of that action (i.e., when a program is terminated, all reports and investigations that were in progress will be handled under the provisions of the program until they are completed).

(q) A statement that the program can be terminated at any time by any party.

(r) A statement that failure of any party to follow the terms of the agreement ordinarily will result in termination of the program.

(s) A statement that failure of a certificate holder to follow through with corrective action acceptable to FAA, to resolve any safety deficiencies, ordinarily will result in termination of the program.

(t) A detailed description of the following concepts if they are included in the program and, if appropriate, how they will be used: Event Review Committee, consensus of the ERC, sole source reporting, sufficient evidence, and enforcement-related incentive.

(u) A statement that repeated instances involving the same or similar type of misconduct previously addressed with administrative action under the ASAP, may also be covered under the program. The determination whether a repeated violation will be covered under a program will be made by the ERC on a case-by-case basis, upon consideration of the facts and circumstances surrounding the misconduct (See Paragraph 5.C.(1)(b)v). The MOU must state that the ERC will be provided with a means of determining whether a report involves a repeat of the same or a similar alleged violation by the same employee previously covered under ASAP. However, the specifics of how this is accomplished do not need to be addressed in the MOU.

(v) ASAP that may include air traffic control (ATC) events should include procedures in the MOU to identify the date, time, location or fix, altitude, call sign, and ATC frequency at the time the event occurred.

(w) A statement that employees initially included under an ASAP will be excluded from the program if the employee fails to complete the recommended corrective action in a manner satisfactory to all members of the ERC. In those cases, failure of any individual to complete corrective action for an apparent violation, a qualification issue, or medical certification or medical qualification issue in a manner acceptable to all members of the ERC, may result in the reopening of the case and referral of the matter for appropriate action.

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(x) A statement that any safety-related ASAP event that concerns an apparent violation(s) that is EXCLUDED from ASAP, will be referred by the FAA ERC representative to an appropriate office within FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

(y) A statement that a closed ASAP case, including a related EIR involving a violation addressed with administrative action, or for which no action has been taken, may be reopened and appropriate legal enforcement action taken if sufficient evidence later is discovered that establishes the violation should have been excluded from the program.

(z) A statement that when the ERC becomes aware of an issue involving the medical qualification or medical certification of an airman, the ERC must immediately advise the appropriate Regional Flight Surgeon about the issue. The ERC will work with the Regional Flight Surgeon and the certificate holder's medical department or medical consultants to resolve any medical certification or medical qualification issues or concerns revealed in an ASAP report, or through the processing of that report. The FAA ERC member must follow the direction(s) of the Regional Flight Surgeon with respect to any medical certification or qualification issue(s) revealed in an ASAP report.

(aa) A statement that reports that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification will be referred to an appropriate FAA office for further handling. FAA may use such reports for any enforcement purposes and will refer such reports to law enforcement agencies, as appropriate.

(ab) A description of the ERC process, if any, for addressing non-reporting employees.

(5) The MOU must be signed by an authorized representative of each party. The MOU will be signed by the CHDO manager on behalf of FAA following acceptance by the Director, Flight Standards Service, AFS-1.

(6) Revision Control. The certificate holder shall be responsible for complying with standard revision control methodology with respect to the MOU. The original and subsequent revisions thereto shall include:

- i. for each revision to an original MOU, a change control page, identifying the revision number, a brief synopsis

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of each change to the original document, and specifying which pages are to be removed and replaced.

ii. a list of effective pages

iii. a table of contents

iv. on each page of the MOU a calendar date for when that page was prepared or revised.

v. for all revisions to an original MOU, a revision number on each page which is revised.

vi. sequential page numbers on all pages of the MOU (except the cover page, if applicable, which shall be understood to constitute page i).

F. ASAP Program acceptance/renewal/amendment procedures.

(1) The certificate holder should initially develop and present the proposed program to the CHDO for review. The regional office, and the CHDO will review it to ensure that it satisfies the guidance in AC 120-66, as amended, Order 2150.3A, and FAA Handbook Bulletin HBAAT 00-08 and HBAW 00-07, Establishment of Aviation Safety Action Programs (ASAP), and request revisions as required. Prior to acceptance, the program should be reviewed to ensure that FAA resources are available to administer the program effectively. Program proposals that require excessive agency resources should be modified, or not accepted.

(2) When the regional office and the CHDO are satisfied that the proposed program is acceptable under the guidance of ASAP, the CHDO manager forwards a copy of the MOU, along with a copy of the completed ASAP checklist published in this bulletin, a copy of the cover letter from the certificate holder requesting approval of the proposed program, and the CHDO's recommendation for acceptance, through the respective Flight Standards Division regional office to the ASAP Program Office, AFS-230, P.O. Box 20027, Washington D.C., 20041. The ASAP Program Office shall coordinate with other offices as required for review of the MOU. AFS-300 shall provide a subject matter expert to assist the ASAP Program Office as required in the review of Maintenance and Engineering ASAP MOUs. The electronic transmission of the MOU text to AFS-230 is encouraged to facilitate the review process. The ASAP Program Office shall forward a copy of the MOU to the Office of the Chief Counsel, Enforcement Division, AGC-300, for appropriate legal review. If it is determined that revision to a proposed ASAP MOU is needed, the ASAP Program Office shall be responsible for consolidating FAA comments and returning them through the regional headquarters to the CHDO.

(3) All programs except for renewals of continuing programs, shall receive final acceptance from the Director of Flight Standards, AFS-1. AFS-1 will indicate acceptance of the MOU by FAA Memorandum to the CHDO Manager through the Regional Division Manager. The ASAP Program Office will be responsible for preparing the memorandum for AFS-1 signature and submitting it with the ASAP package to AFS-1. Following acceptance by AFS-1, the CHDO manager shall sign the MOU on behalf of FAA. The certificate holder should allow a minimum of 60 days for the FAA acceptance process to be completed once its ASAP program is received at FAA Headquarters for review.

(4) ASAP demonstration programs, renewal of a demonstration program and the initial acceptance of a continuing program are processed in the same manner as described in section 5.F.(2) above.

(5) The renewal of a continuing program is accomplished every 2 years after a review by the parties to the MOU to ensure the particular ASAP program is meeting its objectives. The renewal may be accomplished at the local CHDO level by the CHDO Manager signing the MOU on behalf of FAA. The CHDO Manager shall notify the ASAP Program Office, AFS-230, by electronic mail 60 days in advance of renewing a Continuing ASAP program.

(6) Any amendments to an MOU that have already been accepted, must be coordinated with the ASAP Program Office prior to FAA acceptance.

(7) Recordkeeping. The parties should maintain those records necessary for a program's administration and evaluation. Records submitted to FAA for review pursuant to the ASAP are protected to the extent allowed by law, under applicable exemptions of the Freedom of Information Act. A certificate holder's ASAP records and reporting system must not be contrary to 14 CFR, the Pilot Records Improvement Act, or any other laws.

G. Additional information and procedures.

(1) The CHDO is the focal point of all enforcement-related investigations resulting from events reported through the program. The CHDO, upon learning of an ASAP event that may involve a violation of the Regulations, will make every attempt to contact the investigating FSDO which has jurisdiction over the geographical area where the event occurred. If the investigating FSDO has opened an EIR, and the alleged violator has submitted an ASAP report that has been accepted into the certificate holder's ASAP, the FSDO shall transfer the investigation including the EIR to the CHDO for further investigation and disposition. The CHDO may also request the transfer of other reports related to the

event, such as a preliminary pilot deviation report submitted under Order 8020.11C, or, the CHDO may determine that completion of the related report should remain at the FSDO having geographical responsibility for investigating the incident. If the CHDO requests the transfer of related reports, the CHDO is responsible for assuring that they are completed in accordance with existing FAA procedure. If the ASAP report was not accepted into the program, the investigation and EIR remain at the FSDO unless each Region agrees to transfer the case in accordance with paragraph 208(e) of Order 2150.3A.

(2) It is important that the CHDO notify the FSDO community when an ASAP has been initiated or terminated. This notification should include at least the following information:

- (a) Name of airline/repair station;
- (b) Categories of employees it pertains to: flight crewmembers, mechanics, dispatchers, etc.;
- (c) FAA ASAP contact (telephone number);
- (d) The type of program (Demonstration, Continuing, or termination of a program);
- (e) Duration of a program (start/end dates);
- (f) All other information the CHDO perceives as appropriate.

6. ACTION. When a certificate holder submits an MOU, principal inspectors should follow these steps:

- A. Review the Key Terms in paragraph 4;
- B. Review the concepts in paragraph 5, Discussion;
- C. Fill out the checklist to ensure that the MOU complies with the criteria presented in this bulletin.
- D. Aviation Safety Inspectors who will review an ASAP MOU for recommended approval or will participate in an ERC should attend training as prescribed by the Flight Standards Training Division.
- E. Aviation safety inspectors who will serve as ERC representatives should meet the following minimum qualifications:

- (1) Three years of Flight Standards Service Experience (Series 1825).

- (2) One year of 14 CFR Part 121 Certificate Management Experience.

(3) ASAP initial/continuing training.

(4) Except for new ASAP programs, attendance at three ERC meetings (OJT). For a new ASAP program, inspector attendance, if feasible, at another certificate holder's ERC is recommended for training purposes prior to the inspector's participation in the new program.

7. PROGRAM TRACKING REPORTING SUBSYSTEMS (PTRS) INPUT For activity associated with participation in the ASAP review committee, operations and cabin safety inspectors should enter the PTRS code 1391 for each set of such reports reviewed, maintenance inspectors should use PTRS code 3395, and Avionics inspectors should use 5395 for these reviews. Enter the designator code appropriate to the air carrier or repair station whose ASAP program was associated with the reports. Use the numeric-miscellaneous field to record the number of reports reviewed. Comments regarding the report content or conduct of the ASAP program may be entered as necessary. For sole source reports regarding actions of individual employees, the inspector should not enter the name of the employees.

a. If an enforcement investigation associated with an ASAP report is initiated, the inspector shall enter the code ASAP in the National Use block of the Program Tracking and Reporting Subsystem initiated, in order to track aspects of the ASAP. This entry is in addition to the PTRS code appropriate for the specific activity (e.g. 1735/33, 3731/33, 5731/33). It is also important to complete the Designator Block with the appropriate air carrier or repair station designator code even when completing a PTRS activity involving an employee of the certificate holder.

b. General comments regarding the report content or conduct of the ASAP program may be entered as necessary. For sole source reports regarding actions of individual employees, the inspector should not enter the name of the employees.

8. INQUIRIES. Any questions regarding this handbook bulletin should be directed to the ASAP Program Office, AFS-230, at (703) 661-0275.

9. LOCATION. The above information will be incorporated into the appropriate inspector handbooks. Inspectors should make a notation in the margin of Order 8400.10, Air Transportation Operations Inspector's Handbook in Volume I, Chapter 4, Section 2; and Order 8300.10, Airworthiness Inspector's Handbook, Volume IV.

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/s/
L. Nicholas Lacey
Director, Flight Standards Service

ATTACHMENTS

APPENDIX I

AVIATION SAFETY ACTION PROGRAM (ASAP) CHECKLIST

Directions:

The following checklist may be used by the certificate holder and shall be used by the Federal Aviation Administration (FAA) to ensure that the items necessary for an ASAP have been completed. However, the program may contain additional information not included in this checklist that is necessary for the operation of the program.

This checklist shall be submitted to the FAA Certificate Holding District Office (CHDO) along with the completed Memorandum of Understanding (MOU) at the time of submission for FAA acceptance.

The CHDO shall review this checklist to ensure that all provisions of the ASAP have been met in accordance with the guidance material. The CHDO shall include the completed checklist along with other applicable items discussed in this Handbook Bulletin for Regional and Headquarters review.

The RESPONSE column should be answered for each question. The response should be YES, NO, or NA (not applicable). All NO or NA responses should include a brief explanation as to why that item was marked NO or NA.

The REFERENCE column should also be completed by identifying the location of the particular item in the Certificate Holders MOU, e.g., MOU, page 2, paragraph 3a.

	<u>RESPONSE</u>	<u>REFERENCE</u>
(1) Does this program involve a part 121 Air Carrier or part 145 Major Domestic Repair Station?	_____	_____
(2) Is this ASAP:		
a. A Demonstration program?	_____	_____
b. A Renewal of a Demonstration program?	_____	_____
c. A Continuing program?	_____	_____
d. A renewal of a Continuing program?	_____	_____

	<u>RESPONSE</u>	<u>REFERENCE</u>
(3) Is the duration of the program, which should be limited to the period of time needed, sufficient to achieve the desired goals and benefits articulated in the program?	_____	_____
(4) Have all parties to the ASAP entered into this agreement voluntarily?	_____	_____
(5) Is there a description of the objective(s) of the program which includes:		
a. The essential safety information that is reasonably expected to be obtained through the program?	_____	_____
b. Any specific safety issues that are of a concern to any of the parties?	_____	_____
c. The benefits to be gained through the use of the program?	_____	_____
(6) Is there a description of any enforcement-related incentive that is needed to achieve the desired goal and results of the program?	_____	_____
(7) Is there a statement that all safety-related reports shall be fully evaluated and, to the extent appropriate, investigated by the ERC?	_____	_____
(8) Is there a description of the manner in which ASAP records and reports shall be kept?		
	=====	=====

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	<u>RESPONSE</u>	<u>REFERENCE</u>
(9) Does the MOU contain a statement that the certificate holder's ASAP records and reporting system shall not be contrary to the Federal Aviation Regulations or the Pilot Records Improvement Act (PRIA), or any other laws?	=====	
(10) Is there a description of the process for timely reporting to the ERC all events disclosed under the program? (This process should not conflict with the information described in, paragraph 9. b. and c. of Advisory Circular, AC 120-66, as amended).	_____	_____
(11) Is there a description of the procedures for the following:		
a. The resolution of safety-related events?	_____	_____
b. Continuous tracking of those events?	_____	_____
c. The analysis of safety-related events?	_____	_____
(12) Is there a description of the Event Review Committee (ERC) ASAP report acceptance and exclusion criteria?	_____	_____
(13) Is there a description of the frequency of periodic reviews by the parties to determine whether the program is achieving the desired results? (These reviews are in addition to any other review conducted by FAA).	_____	_____
(14) Are the point(s) of contact responsible for oversight of the program identified for each party?	_____	_____

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	<u>RESPONSE</u>	<u>REFERENCE</u>
(15) Is there a description of the process for training and distributing information about the program to certificate holder employees and procedures for providing feedback to individuals who make safety-related reports under the program?	_____	_____
(16) Is there a statement that modifications to the MOU must be accepted by all parties?	_____	_____
(17) Is there a statement that termination or modification of a program will not adversely affect anyone who acted in reliance on the terms of a program in effect at the time of that action, i.e., when a program is terminated, all reports and investigations that were in progress will be handled under the provisions of the program until they are completed?	=====	_____
(18) Is there a statement that the program can be terminated at any time, by any party?	_____	=====
	<u>RESPONSE</u>	<u>REFERENCE</u>

(19) Is there a statement that employees initially covered under an ASAP will be excluded from the program and not entitled to the enforcement-related incentive if they fail to complete the recommended corrective action in a manner satisfactory to all members of the ERC. (In those cases, failure of any individual to complete corrective action for an apparent violation, a qualification issue, or medical certification or medical qualification issue in a manner acceptable to all members of the ERC,

may result in the reopening of the case and referral of the matter for appropriate action).

(20) Is there a statement that failure of a certificate holder to follow through with corrective action acceptable to FAA, to resolve any safety deficiencies, will ordinarily result in termination of the program?

(21) Is there a detailed description of the following concepts if they are included in the program and, if appropriate, how they will be used:

a. Event Review Committee?

b. Consensus of the ERC?

c. Sole-source reporting?

d. Sufficient evidence?

e. Enforcement-related incentive?

	<u>RESPONSE</u>	<u>REFERENCE</u>
(22) Is there a statement that repeated instances involving the same or similar type of misconduct previously addressed with administrative action under the program, may also be covered under the program? (The determination whether a repeated violation will be covered under a program will be made by the ERC on a case-by-case basis, upon consideration of the facts and circumstances surrounding the misconduct).	_____	_____
(23) Is there a statement that the ERC will be provided with a means of determining whether an ASAP report involves a repeat of the same or a similar alleged violation from the same employee previously covered under ASAP? (Note: It is not necessary to specify in the MOU how this will be accomplished.)	_____	_____
(24) Does the ASAP include an MOU procedure to identify the date, time, place, altitude, call sign, and Air Traffic Control (ATC) frequency for ATC events?.	_____	_____
(25) Is there a statement that any safety-related ASAP event that concerns an apparent violation(s) that is EXCLUDED from ASAP, will be referred to an appropriate office within FAA for any additional investigation and reexamination and/or enforcement action, as appropriate?	_____	_____

(26) Is there a statement that a closed ASAP case including any related Enforcement Investigation Report (EIR) involving a violation addressed with the enforcement-related incentive, or for which no action has been taken, may be reopened and appropriate legal enforcement action taken if sufficient evidence later is discovered that establishes that the violation should have been excluded from the program?

RESPONSE

REFERENCE

(27) Is there a statement that when the ERC becomes aware of an issue involving the medical qualification or medical certification of an airman, the ERC must immediately advise the appropriate Regional Flight Surgeon about the issue? (The ERC will work with the Regional Flight Surgeon and the certificate holder's medical department or medical consultants to resolve any medical certification or qualification issues or concerns revealed in an ASAP report, or through the processing of that report. The FAA ERC member must follow the direction(s) of the Regional Flight Surgeon with respect to any medical certification or medical qualification issue(s) revealed in an ASAP report.)

(28) Is there a statement that reports that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification will be referred to an appropriate FAA office for further handling? FAA may use such reports for any enforcement purposes and will refer such reports to law enforcement agencies, as appropriate.

(29) Is there a statement that in the

event there is not a consensus of the
ERC, the FAA representative will
decide how the report should be
handled?

=====

(30) Is there a statement that
participation in ASAP is limited to
certificate holder employees and to
events occurring while acting in that
capacity?

=====

(31) Is there a statement that failure
of any party to follow the terms of
the agreement ordinarily will result
in termination of the program?

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